ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Allocation of Costs Associated With Local Exchange Carrier Provision of Video Programming Services	)	CC Docket No. 96-112

REPLY COMMENTS OF COX COMMUNICATIONS, INC.

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June 12, 1996

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SUMMARY

Until actual facilities-based competition is a reality in local exchange service markets across the country, LECs retain strong incentives to cross subsidize their nonregulated services with revenues from their regulated services. Because current federal and state price cap regimes include sharing options and performance reviews, and because LEC costs must be monitored for other purposes (such as determining universal service subsidies), specific, easily implemented cost allocation rules are essential to prevent LECs from improperly classifying nonregulated costs as regulated costs. Indeed, the Telecommunications Act of 1996 ("1996 Act") specifically prohibits ratepayer subsidy of competitive services and requires regulators to "establish any necessary cost allocation rules." Yet the LEC comments in this proceeding ignore this statutory requirement and attempt to convince the Commission that the mere potential for future facilities-based competition in the local exchange market obviates a LEC's ability to use its monopoly power to cross subsidize. Under the framework of the statute, however, actual facilities-based local loop competition, not potential competition, is necessary before competition alone can protect ratepayers.

The LEC arguments that price caps protect consumers are similarly infirm. Price caps do not remove the LEC incentive to cross subsidize. The current federal price cap regime gives the LECs the ability to choose, and switch, between different sharing options. Further, even if sharing and annual carrier elections were permanently eliminated, federal price caps would still afford inadequate consumer protection because the price cap index imperfectly reflects a LEC's true productivity growth. Finally, even if a no-sharing federal

price cap regime were to somehow be perfected, unless every state also adopted perfect price cap rules, the LECs would still have an incentive to misallocate costs. Accordingly, price caps cannot now or in the foreseeable future be relied upon as a bulwark against LEC cross-subsidy.

The Commission recognized in the *Notice* that current Part 64 rules are insufficient to prevent improper LEC cross subsidization of network rebuilds aimed at allowing the LECs to provide video programming. The comments reflect wide agreement with the Commission's proposals to adopt a fixed factor to allocate common costs among regulated and unregulated services, and to treat the reallocation of regulated costs to nonregulated accounts as exogenous cost changes. Contrary to LEC assertions, fixed factors are not complicated and can be easily implemented. Cox supports the use of a fixed factor that recognizes that the common costs of such shared networks should be allocated 75 percent to video (and other unregulated services) and 25 percent to telephony.

It is plain from their own comments that absent specific, effective cost allocation rules, the LECs will allocate costs so as to protect their shareholders from the financial risk of LEC entry into a new business such as video. As the Commission properly recognized and Congress has now required, telephony ratepayers deserve to receive some of the benefits of the new services offered by the LECs as a result of the costly network rebuilds the LECs have undertaken over the past few years. Cox thus urges the Commission promptly to amend its Part 64 rules to reflect the impact of LEC network rebuilds on their captive telephone ratepayers.

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Cox Communications, Inc. ("Cox"), by its attorneys, hereby submits these reply comments in response to the comments filed on the Notice of Proposed Rulemaking (the "*Notice*") issued by the Federal Communications Commission (the "Commission") in the above-referenced proceeding.

I. INTRODUCTION

The comments filed in this docket illustrate that local exchange carriers ("LECs") cannot accept participation in a competitive market without giving up the guarantee of monopoly regulation cost recovery. The LECs attempt to convince the Commission that local exchange competition is so robust that any cost allocation rules are unnecessary, thus giving the LECs a free hand to allocate costs at will. However, when they do discuss their proposed cost allocation schemes, they insist that such schemes preserve their ability to invest in video programming delivery systems without having their shareholders assume any significant risk.

Congress, however, did not intend for the Commission to promote consumer choice in the video marketplace at any cost. Indeed, the Telecommunications Act of 1996 ("1996 Act") specifically includes a provision that prohibits incumbent LEC cross subsidy of unregulated services by regulated telecommunications services.[1] The opening comments reveal that the LECs intend to cross subsidize their nonregulated video services absent specific, enforceable Commission rules. By statute, therefore, the Commission is obligated to adopt cost allocation rules for LEC shared network costs to prevent this obstinate LEC behavior.

II. THE FEDERAL PRICE CAP REGIME DOES NOT PROTECT AGAINST CROSS SUBSIDIZATION.

A. Price Caps Do Not Remove the Incentive for LECs to Cross Subsidize.

The LECs claim that there is no need for revised cost allocation rules to prevent cross subsidization because the federal price cap regime allegedly removes any incentive to cross subsidize. They argue that price caps constrain LECs from increasing regulated prices even if network costs rise,[2] and further claim that for those LECs that have elected the no sharing option, "cost allocation requirements are irrelevant."[3] These arguments, however, ignore reality.

As Cox previously demonstrated, the LECs have the ability to choose, and switch annually, between different sharing options. Even if a LEC elects the price cap no-sharing option in one year it still has the incentive to systematically misallocate costs to regulated

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1/ 47 U.S.C. § 254(k). *See also* California Cable Television Association ("CCTA") Comments at 5.

2/ *See, e.g.,* United States Telephone Association ("USTA") Comments at 4-6; Pacific Bell and Nevada Bell ("Pacific Bell") Comments at 3-6; BellSouth Corporation and BellSouth Telecommunications, Inc. ("BellSouth") Comments at 4-5; Bell Atlantic Comments at 1-3.

3/ *See, e.g.,* Pacific Bell Comments at 3.

services to reduce regulated earnings and avoid sharing obligations in future years.[4] Moreover, even if sharing were permanently eliminated, price caps still would not solve the problem of cross subsidization because the price cap index imperfectly captures the LEC's true productivity growth.[5]

Finally, even if sharing were eliminated and the federal price cap index could somehow be perfected, LEC incentives to cross-subsidize would remain as long as there is *any* difference between the federal price cap regime and regulation in each of the states. Because federal price cap rules apply only to the 25 percent *interstate* portion of local loop costs, even if all LECs were operating under a "perfect" price cap regime at the federal level, LECs would still have an incentive to misallocate costs unless each state also had a "perfect" intrastate price cap regime.[6] Thus, despite all of the LEC theoretical discussions of the benefits of a "pure" price cap regime, the current price cap regime still contains significant incentives for the LECs to misallocate costs to their captive ratepayer's detriment.

4/ *See, e.g.*, Cox Communications, Inc. ("Cox") Comments at 11; Comcast Cable Communications, Inc. and Adelphia Communications Corporation ("Comcast and Adelphia") Comments at 9; *see also* AT&T Comments at 11.

5/ The fact that price cap regulation is subject to periodic regulatory review and adjustment by both state and federal regulators also makes reliance on price caps problematic. For example, even after AT&T had been under a federal price cap regime with no sharing for three years, the Commission felt it necessary to review AT&T's price cap performance. *Price Cap Performance Review for AT&T*, Notice of Inquiry, 7 FCC Rcd 5322, 5323 (1992); *Price Cap Performance Review for AT&T*, Report, 8 FCC Rcd 5165 (1993) *(AT&T Performance Review Report)*.

6/ A large number of independent LECs, however, still elect rate-of-return rather than price cap regulation. Accurate cost allocation rules are especially vital for these carriers to prevent universal service funds from subsidizing nonregulated ventures.

Because the price cap regime, standing alone, is ineffective in constraining the LECs' ability and incentives to cross subsidize, the LECs' request that the Commission forbear from continuing to apply Part 64 rules to price cap LECs should be summarily dismissed.[7] Instead, the Commission should, as the *Notice* suggests, revise its Part 64 rules to create a fixed allocator to accommodate LEC use of the same network facilities to provide video programming service and other competitive nonregulated offerings not subject to Title II.[8] In the context of massive LEC investments to rebuild their networks into broadband networks, neither price caps nor the current Part 64 allocation rules protect consumers from cross-subsidy.[9]

LEC calls for the Commission to loosen current Part 64 rules, such as the Bell Atlantic proposal to update cost allocation manuals annually instead of quarterly and the Ameritech proposal to change the independent audit requirement from annual to biannual, should also be rejected.[10] The huge amount of LEC investments in nonregulated video services requires more, not less, regulatory scrutiny because with the increased investment, the LEC incentive to cross subsidize is far greater.

7/ *See, e.g.,* BellSouth Comments at 9-10; NYNEX Comments at 5-6; Ameritech Comments at 4-10.

8/ *Notice* at ¶ 2.

9/ Current Part 64 regulated/nonregulated cost allocators for common costs were developed when nonregulated plant accounted for a minute portion (less than 1 percent) of total LEC plant. Revisions are plainly required for the major LEC broadband network rebuilds that are now underway.

10/ *See* Bell Atlantic Comments, Exhibit B; Ameritech Comments at 14-15.

B. Reallocated Investment Must Be Treated as Exogenous Cost Changes.

As many commenters observed, any failure to adjust a LEC's price cap indices to reflect a reallocation to nonregulated services of the costs of facilities paid for by captive customers of regulated services would be tantamount to a direct cross subsidy of a LEC's entry into the video market.[11] Because cross subsidy from regulated services is now forbidden by statute, failure to reflect the change in use of facilities from regulated to shared regulated/nonregulated use as an exogenous cost change would be contrary to law. Further, as recognized in the *Notice*, the Commission's current rules already require exogenous cost treatment when investment is reallocated from regulated to nonregulated activities.[12]

The LECs urge the Commission to ignore its rules or alternatively to interpret them to prevent triggering of the exogenous cost requirements. USTA, for example, states that while exogenous treatment is to be applied to compensate the ratepayer for the misallocation of shared network investment, the adjustment was never intended to address sharing of the economies of scope from joint operations.[13] USTA's statement is misplaced. If plant that has been 100 percent regulated is now shared, an error *has* occurred in LEC forecasting. If a LEC builds a hybrid fiber-coax network for "telephone only" and then when the network is

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11/ Alabama Public Service Commission ("Alabama") Comments at 7; Pennsylvania Office of Consumer Advocate ("Pennsylvania") Comments at 16; Comcast and Adelphia Comments at 8.

12/ *See Notice* at ¶ 60 citing 47 C.F.R. § 61.45(d)(1)(v).

13/ USTA Comments at 14 citing *Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities,* Order on Further Reconsideration, 3 FCC Rcd 6701, 6705 (1988) at ¶ 34 (*"Order on Further Reconsideration").*

complete suddenly decides to also use the network for video, the LEC has either made a forecasting error for which exogenous treatment is appropriate or it has committed fraud.

The LECs also argue that exogenous cost treatment is not proper because the productivity offset in the LEC price cap adjustment formula already captures economies of scale and scope, including economies of scale and scope resulting from the offering of new nonregulated services.[14] Thus, the LECs claim, exogenous cost treatment of a reallocation would reduce LEC price cap indices twice in a "double reduction," once through exogenous cost treatment of a reallocation using a fixed factor and once through the productivity offset. These LEC concerns are misplaced and overblown.

First, the price cap formula was designed to capture economies of scale and scope of telephone and related services, not of nonregulated services with no connection to telephony, such as video services. Scale and scope economies stemming from joint telephony/video networks were never intended to be reflected in a *regulated* productivity factor and most certainly cannot be when the video service is provided on a nonregulated basis. Second, a double reduction would not occur if the Commission's current rules are followed and reallocations are treated as exogenous costs with adjustments to the productivity factor only reflecting economies from *regulated* services.[15] Conversely, if exogenous treatment were not

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14/ *See, e.g.*, BellSouth Comments at 10-11.

15/ When the Commission recently reexamined the price cap rules and the productivity factor (the "X-Factor"), LEC entry into video was largely restricted to video dialtone, a regulated service. *Price Cap Performance Review for Local Exchange Carriers,* CC Docket No. 94-1, Fourth Further Notice of Proposed Rulemaking, FCC 95-406, released September 27, 1995. The Commission's examination of the X-Factor did not contemplate that LEC video offerings via a shared network might be nonregulated, and thus the X-Factor (continued...)

applied, the LECs would receive a potentially huge cross-subsidy windfall due to the inherent lag time in the review and adjustment of productivity factors during the period between when LECs begin using the network for nonregulated services and when the productivity factor is adjusted to reflect the additional network use.[16] Such a windfall would be against public policy, contrary to Commission rules, and in violation of the statute.[17]

No party attempts to dispute the widely acknowledged fact that LEC economies of scale and scope due to new technology have been increasing. As BellSouth illustrates in its comments,[18] the LECs have undertaken major network rebuilds over the past few years and have thus far financed those rebuilds with ratepayer revenues. Now that the LECs propose to use their upgraded networks to provide a service that, from the consumer's perspective, in

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15/ (...continued) should be reexamined in light of the new Open Video Systems and cable service options available to LECs under the 1996 Act.

16/ Interstate productivity factors are currently adjusted on an irregular schedule and, contrary to LEC claims, can easily be based on studies that exclude nonregulated services. USTA's proposal is for a five-year rolling review which could create a potential five year cross-subsidy windfall to the LECs opting to share regulated and nonregulated facilities.

17/ USTA also suggests that a pending proposal in the price cap docket to use a total factor productivity ("TFP") approach to computing the X-Factor reflects the economies of scale achieved through the provisioning of regulated and nonregulated services over a shared system. USTA Comments at 13 citing *Price Cap Performance Review for Local Exchange Carriers*, First Report and Order, 10 FCC Rcd 8961, 9032 (1995) at ¶ 159. *See also* Pacific Bell Comments at 17-18. The Commission has not, however, adopted a TFP-based X-Factor, and should not if the factor includes costly nonregulated services such as video. Inclusion of video rebuilds into a TFP-based X-Factor would give the LECs enormous incentives to cross subsidize because if LEC video productivity is low, LEC total productivity will appear to be low, even if LEC telephony productivity is very high, skewing the potential for competition in both video and telephony markets.

18/ *See* BellSouth Comments at 12-14.

no manner relates to traditional telephone service, ratepayers are entitled to receive a benefit from the joint use of these facilities.[19] Exogenous cost adjustments are necessary to ensure an immediate joint use benefit

C. Federal Rules Are Necessary to Assist the States.

Precisely because the majority of local loop costs are allocated to intrastate rather than interstate ratemaking, the Commission must establish predictable, easily applied cost allocation rules for LEC video-telephony shared networks. Many state regulatory commissions do not have the resources or the tools to determine the appropriate allocation between video and telephony services, and some state regulatory commissions are constrained by statute from being able to review the reasonableness of local exchange rates absent specific LEC actions.[20] All of the states filing comments agree that a fixed allocation set by the Commission at the Part 64 level is necessary to protect consumers.[21]

19/ Other LEC arguments against exogenous treatment misrepresent current price cap rules. NYNEX and Pacific Bell, for example, claim that a cost reallocation from regulated to nonregulated accounts is nothing more than an "accounting rule change" for which a cash flow change is required before exogenous treatment is appropriate. NYNEX Comments at 23-24; Pacific Bell Comments at 16-17. Such LEC misrepresentations must be rejected — the reallocation of large portions of network costs from regulated to nonregulated accounts involves far more than just an "accounting rule change."

20/ *See, e.g.*, Neb. Rev. Stat. § 86-803 (The Nebraska Public Utilities Commission has no authority to review LEC basic rates unless a LEC raises its rates by more than 10 percent in one year or unless 2 to 5 percent of a LEC's customers (depending on a LEC's size) formally complain).

21/ *See, e.g.*, Pennsylvania Comments at 12; Alabama Comments at 5; State of New York Department of Public Service ("New York") Comments at 2; Florida Public Service Commission ("Florida") Comments at 2.

III. A FIXED FACTOR SHOULD BE USED TO ALLOCATE COSTS OF ALL SHARED PLANT.

All non-LEC commenters that filed in this proceeding support the use of a fixed factor to allocate common costs. The LECs oppose the use of a fixed factor because they view it as restricting their ability to vary network architecture.[22] What the LECs overlook, however, is that a fixed factor would not apply to an entire LEC network — the fixed factor would apply only to common costs of shared outside plant.[23] Variations in network architecture result in different direct cost assignments, but shared plant is shared plant and no other information is needed to apply a fixed factor. Accordingly, the Commission should reject claims of the purported adverse effects of a fixed factor on LEC ability to innovate in network architecture.

Contrary to the assumptions of several LECs, it is critical that any fixed factor apply to all shared plant, not just new investment.[24] As discussed in the prior section, any failure to allocate all common costs between regulated and nonregulated services would amount to a cross subsidy of video service paid for by captive telephone ratepayers. It is irrelevant that

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22/ *See, e.g.*, Southwestern Bell Telephone Company ("SBC") Comments at 13; U S West Comments at 6; USTA Comments at 8.

23/ For example, LEC network supplier BroadBand Technologies, Inc. states that a fixed allocator should not be applied to its Fiber Loop Access (FX) system because certain switching components are used exclusively for the delivery of unregulated services, while other components are used exclusively for traditional regulated services. BroadBand Technologies, Inc. Comments at 7. The Puerto Rico Telephone Company similarly apparently fails to realize that a fixed allocator will not be applied to networks that are not providing both video and telephony because those networks will not be shared. Puerto Rico Telephone Company Comments at 3.

24/ *See, e.g.*, GTE Comments at 7 n.6.

only a few LECs currently have shared networks of any magnitude.[25] Telephone ratepayers already have paid for and are paying for network rebuilds all across the country, purportedly to support "state-of-the-art" telephone networks. As USTA itself observes, when LECs rebuild plant they do so in a manner to include capacity beyond current needs.[26] Consequently, one could presume that any LEC use of shared plant was anticipated and planned for by the LEC, regardless of when the LEC made its public announcement that it was "going into video." A regulatory regime that allows the LECs to allocate all network rebuild costs onto regulated ratepayers until the point at which the LECs decide to announce that the shared network will be used for both telephony and video is beyond comprehension, yet that is exactly the regulatory regime the LECs propose.[27]

Further, to prevent ratepayers from currently paying for spare fiber capacity that may ultimately be used for unregulated services, the Commission should establish a presumption that spare facilities will be used for unregulated services and allocate their costs

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25/ *See, e.g.*, Bell Atlantic Comments at 4.

26/ USTA Comments at 20.

27/ The Commission's rules already provide that when reallocations of telecommunications plant from regulated to nonregulated are required, such plant will be transferred at nondepreciated baseline cost *plus* an interest charge to reflect the time value of money. *Separation of Costs of Regulated Telephone Service From Costs of Nonregulated Activities*, Report and Order, 2 FCC Rcd 1298 (1987) at ¶ 170. The interest cost is intended both to compensate the regulated operation for the time value of the costs it bore for the nonregulated operation *and* to overcome the incentive for the carrier to underestimate its future nonregulated demand to avoid committing plant capacity to the nonregulated operation. *Id.* at ¶ 171. These rules were designed to prevent the LECs from taking the exact actions they now propose and thus must be enforced to prevent cross-subsidization.

accordingly.[28] The parties with full information, the LECs, can then rebut the presumption and have costs allocated to regulated services by conclusively showing that the facilities will be used solely to meet projected and actual telephony needs.

After their video systems are up and running, the LECs propose to allocate shared costs according to the relative number of video and telephony customers.[29] Alternatively, the LECs argue that costs for the *video* portion of the network should only reflect the services currently offered, so that a system offering only basic cable would not be allocated the same level of costs as a system that offers basic cable, video-on-demand and interactive video.[30]

The self-serving nature of these proposals becomes evident when one asks whether the shared costs allocated to telephone ratepayers are cost-causative. Nothing changes on the telephone side of the equation under any of these scenarios. Yet not one LEC explains how it can be cost-causative for telephone ratepayers to pay for virtually all of the shared network costs in the early years of video operation; or how it is cost-causative for the portion of

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28/ *See, e.g.,* National Cable Television Association ("NCTA") Comments at 22.

29/ *See* U S West Comments at 11; NYNEX Comments at 13; SBC Comments at 9. These LEC proposals are consistent with LEC cost allocations for video dialtone when video was a regulated service. *See, e.g., Application of Southern New England Telephone Co.*, W-P-C-704 (filed April 28, 1995) at 19 (proposing to allocate the common costs of a video dialtone system based on the ratio of video lines to video plus telephone lines). The state of Connecticut rejected Southern New England Telephone Co.'s proposed allocation of common costs, finding that the "cost allocation will lead to basic telephone service subscribers bearing most of the costs based on allocation and direct assignment techniques that have little relationship to the reasons why these costs were incurred." *Application of Southern New England Telephone Company for Approval to Conduct a Dial Tone Transport and Switching Market Trial,* Docket No. 95-03-10, Decision at 12 (June 30, 1995).

30/ SBC Comments at 14.

shared network costs allocated to telephone ratepayers, assuming a video operation is successful, to decrease over time as the number of video services are increased. These purportedly "cost-causative" LEC proposals, when examined in full, are nothing more than arbitrary methods of cost allocation that will always skew toward having LEC regulated telephone customers pay more, not less of the common costs.

Adoption of a fixed allocation factor, as many parties noted, is the best available method of allocating shared network costs. The Commission accordingly should adopt a fixed factor that reflects the relative network costs of video and telephony such as the 75 percent/25 percent factor presented by Dr. Johnson for NCTA[31/] and apply it to all LECs providing or preparing to provide video and telephony using a shared network.[32/]

IV. CONGRESS INTENDED FOR LECS TO BE COMPETITORS IN THE VIDEO PROGRAMMING MARKET BUT NOT AT THE EXPENSE OF RATEPAYERS.

Congress intended for LECs to be competitors in the video programming market, not that LEC video systems be constructed regardless of their economic viability under the rubric of "additional consumer choice." By statute the Commission must ensure that regulated

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31/ NCTA Comments, Attachment 1. *See also* Comcast and Adelphia Comments at 8 (fixed factor should allocate at least 70 percent of common costs to nonregulated services); CCTA Comments at 17-20 (fixed factor should allocate 76 percent of common costs to nonregulated services); Time Warner Cable Comments at 10-11 (fixed factor should allocate at least 75 percent of common costs to nonregulated services); Cox Comments at 8-10 (fixed factor should allocate 75 percent of common costs to nonregulated services).

32/ A cost ceiling, such as the stand-alone costs of telephony, might also be used in conjunction with a fixed factor allocation to ensure that telephone ratepayers never pay more for telephone service than they would if a LEC had a telephony-only network. *See* NCTA Comments at 19; CCTA Comments at 14-16; Pennsylvania Comments at 11-12.

services do not subsidize nonregulated services,[33] yet following the LEC proposals in this docket would make cross subsidization a virtual certainty. The Commission must not, and cannot, adopt the LEC view that all new entry into the video programming market benefits consumers and competition. To the contrary, competition and consumers will be the real losers if LECs are permitted to enter the video programming market by cross subsidizing their video programming offerings with revenues from captive telephone ratepayers.

The LECs also urge the Commission to regulate shared network accounting matters lightly because of the "significant competition" currently faced by the LECs in their territories.[34] The LECs would have the Commission believe that competition in the local exchange market is thriving and that, because the LECs have lost their monopoly status,[35] competition is sufficient to protect consumers from cross subsidization. Competition and deregulation do go hand-in-hand, but despite LEC portrayals to the contrary, the Commission has not and could not yet conclude that local exchange market competition exists.[36] While Congress has set a national course towards telephone competition that the Commission is committed to implement, until facilities-based local loop competition *actually exists,* the

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33/ 47 U.S.C. § 254(k).

34/ USTA Comments at 10-11.

35/ *See, e.g.,* Pacific Bell Comments at 5 ("Pacific Bell no longer has a monopoly on any service.").

36/ In 1994 competitive access providers ("CAPs") claimed less than 3 percent of total telecommunications revenues. Competition from competitive access CAPs is entirely different from competition to provide local exchange services. *See, e.g., Common Carrier Competition Report,* (released April 10, 1996) (Industry Analysis Division) (Spring, 1996) at 6.

Commission must act to protect regulated ratepayers from cross-subsidization.[37] It would indeed be ironic if the LECs succeeded in dissuading the Commission from adopting fair, easily administered rules here that encourage fair competition by ensuring no cross subsidy, thereby creating additional regulated costs to be passed onto users, including their interconnector competitors, to stymie the development of telephone competition.[38]

While the LECs talk a great deal about competition, the proposals they advocate in this docket demonstrate nothing more than their obstinate failure to comprehend that companies operating under price caps or in a competitive environment are not guaranteed any rate of return or even a recovery of costs. Competitive companies cannot ignore their costs if they do not have captive customers from which to recover them. Indeed, as is well documented in the cable industry, companies entering capital intensive industries like the video programming delivery industry face years of early losses because of high initial fixed costs. Early year losses are properly borne by telephone company shareholders, not

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37/ There can be no doubt that the 1996 Act's main purpose was to promote competition in LEC monopoly markets. It was for this reason that the 1996 Act provides distinctly preferential interconnection pricing to facilities-based local loop competitors in Section 252(d)(2).

38/ USTA, for example, has stated that the LECs are entitled to a full cost recovery, including a reasonable profit above return on capital, for providing interconnection to competing telecommunications providers. *See Comments of USTA*, CC Docket No. 96-98 (filed May 16, 1996) at 38-43. In this docket, the LEC calls for the Commission to automatically apply any fixed factor allocator adopted to apportion LEC shared network costs between regulated and nonregulated services to cable operators is similarly designed to inhibit competition. As the LECs well know, cable operators already have cost allocation rules that apply to their cable networks. Any change in cable cost allocations would require a new notice that identified the need for and purpose to be served by changing existing policies applied to the cable industry. *See* 47 C.F.R. § 76.924.

ratepayers. The Commission's revised cost allocation rules should make this point plain to the LECs.

V. CONCLUSION

As any observer familiar with the former video dialtone proceedings could have anticipated, the comments filed in response to the *Notice* reflect starkly differing viewpoints on the proper cost allocation of LEC network rebuilds. The LECs urge the Commission to declare victory, decrease oversight over LEC costs, and leave the LECs in peace to cross subsidize their video programming services with revenues from regulated local exchange service. The Congress of the United States, State public service commissions, telecommunications users, and potential local exchange competitors, in contrast, all agree that cost allocation rules are necessary to protect ratepayers while facilities-based competition develops. The Commission should promptly adopt its proposed fixed factor allocator to apply to LEC investment in unregulated services.

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June 12, 1996

CERTIFICATE OF SERVICE

I, Constance A. Randolph, a secretary at the law firm of Dow, Lohnes & Albertson, do hereby certify that on this 12th day of June, 1996, I caused copies of the foregoing "Reply Comments of Cox Communications, Inc." to be served via United States first-class mail, postage prepaid, upon the following persons:

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